BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
GLH ENTERPRISES, INC. **No. 07-05**
ID NO. 02-418746-00-1, TO ASSESSMENT
ISSUED UNDER LETTER ID L1924731392

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on April 11, 2007, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Jeffrey W. Loubet, Special Assistant Attorney General. GLH Enterprises, Inc. ("Taxpayer") was represented by its attorney, Thomas Smidt, II, with Tax, Estate & Business Law, N.A., LLC. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. Prior to August 1996, the Taxpayer worked in Colorado as an independent sales representative for President Homes, Inc., a manufacturer of home packages.

2. The Taxpayer assisted the buyer of a home package with all aspects of building the home, including the acquisition of financing, materials, and labor.

3. President Homes paid the Taxpayer a commission for each home package it sold.

4. The purchase agreement between President Homes and the buyer did not list the Taxpayer's commission in the summary of costs charged to the buyer.

5. In August 1996, the Taxpayer relocated to New Mexico where it continued to provide services as an independent sales representative for President Homes.

6. Neither the Taxpayer nor President Homes was aware that New Mexico imposes a gross receipts tax on commissions and other receipts from performing services in New Mexico.

7. President Homes paid gross receipts tax on its receipts from selling home packages to its New Mexico customers, but the Taxpayer did not report or pay gross receipts tax on the commissions it received from President Homes on those sales.

8. In 2004, the Taxpayer was audited by the Department.

9. On December 9, 2004, the Department assessed the Taxpayer for $36,686.28 of gross receipts tax, plus $18,162.25 of interest, on the Taxpayer's receipts from performing services for President Homes during the fiscal years ending December 31, 1997 through December 31, 2003.

10. In January 2005, the Taxpayer filed a written protest to the assessment.

11. Prior to the administrative hearing on the protest, the Taxpayer provided the Department with evidence to show that some of President Homes' sales were made to out-of-state customers and, as a result, no gross receipts tax was due on the commissions from those sales.

12. At the April 11, 2007 hearing, the Department stipulated that it would reduce the amount of the original assessment by $5,869.62, representing a reduction of $3,940.52 in tax principal and $1,929.10 in interest.

13. After taking this reduction into account, the current balance of the assessment, including interest accrued to the date of the hearing, is $62,834.23.

DISCUSSION

The issue presented is whether the Taxpayer is liable for gross receipts tax on its commissions from performing services as a sales representative for President Homes, Inc. The Taxpayer maintains that imposing gross receipts tax on commissions paid from receipts on which President Homes had already paid tax results in double taxation. The Taxpayer also believes that the Department failed to provide the Taxpayer with sufficient notice that New Mexico imposes tax on receipts from the performance of services, as well as receipts from the sale of goods.

Double Taxation. NMSA 1978, § 7-9-4 imposes an excise tax on the gross receipts of any person engaging in business in New Mexico. The definition of "engaging in business" is quite broad and includes "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit." NMSA, 1978, § 7-9-3.3. The term "gross receipts" encompasses receipts from performing services in New Mexico and is specifically defined to include:

> the total commissions or fees derived from...promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

NMSA 1978, § 7-9-3.5(A)(2)(b).

The Taxpayer argues that taxing its commissions from President Homes results in double taxation. Contrary to popular belief, however, there is no prohibition against double taxation. *Ft. Smith Lumber Co. v. Arkansas*, 251 U.S. 532, 533 (1920) (the United States Constitution does not forbid double taxation). *See also*, *New Mexico State Board of Public Accountancy v. Grant*, 61 N.M. 287, 299 P.2d 464 (1956); *Amarillo-Pecos Valley Truck Line, Inc. v. Gallegos*,

44 N.M. 120, 99 P.2d 447 (1940). In addition, the New Mexico Court of Appeals has held that double taxation does not exist when the taxes complained of are imposed on the receipts of different taxpayers. *See, e.g., House of Carpets, Inc. v. Bureau of Revenue*, 84 N.M. 747, 507 P.2d 1078 (Ct. App. 1973); *New Mexico Enterprises, Inc. v. Bureau of Revenue*, 86 N.M. 799, 528 P.2d 212 (Ct. App. 1974). In this case, the Taxpayer and President Homes are separate taxpayers, each of which is engaged in business in New Mexico: President Homes is engaged in manufacturing and selling home packages to the public; the Taxpayer is engaged in selling services to President Homes. Based on the decisions cited above, there is no double taxation.

The real basis for the Taxpayer's protest is its belief that New Mexico's tax structure is unfair. The Taxpayer must address its concerns to the state legislature. The Department is charged with enforcing New Mexico's tax laws as written and has no authority to ignore or modify those laws. *See*, *State ex rel. Taylor v. Johnson*, 1998-NMSC-015 ¶ 022, 125 N.M. 343, 961 P.2d 768 (the legislature, not the administrative agency, declares the policy and establishes primary standards to which the agency must conform).

Notice of Tax Liability. The Taxpayer argues that the Department failed to provide the Taxpayer and President Homes with sufficient notice that services are subject to the gross receipts tax. This argument misunderstands the nature of New Mexico's self-reporting tax system, which places the duty on taxpayers to accurately determine and pay taxes due to the state. NMSA 1978, § 7-1-13; *See also, Tiffany Construction Co. v. Bureau of Revenue*, 90 N.M. 16, 17, 558 P.2d 1155, 1156 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977). In

Vivigen, Inc. v. Minzner, 117 N.M. 224, 228, 870 P.2d 1382, 1386 (Ct. App. 1994), the court rejected an argument very similar to the argument raised by the Taxpayer here, noting that:

> Vivigen seems to be complaining that the Department did not definitively tell it that it needed to pay compensating taxes on out-of-state purchases so that it could have avoided taxes, interest, and penalties for compensating taxes accrued from and after February 1989. Any necessary notice, however, was provided by New Mexico statutes.

In this case, New Mexico's Gross Receipts and Compensating Tax Act provided the Taxpayer with notice that its receipts from performing services within the state would be subject to gross receipts tax. While it is unfortunate that neither the Taxpayer nor President Homes was aware of the law, this does not excuse the Taxpayer from timely payment of taxes due to the state. *See*, *State v. Tower*, 133 N.M. 32, 34, 59 P.3d 1264, 1266 (Ct. App. 2002) (every person is presumed to know the law); *First Central Service Corp. v. Mountain Bell Telephone*, 95 N.M. 509, 512, 623 P.2d 1023, 1026 (Ct. App. 1981) (ignorance of the law is not an excuse).

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely, written protest to the assessment issued under Letter ID No. L1924731392, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer is liable for gross receipts tax, plus accrued interest, on its receipts from performing services for President Homes during the audit period, with the exception of commissions attributable to out-of-state sales.

C. The Taxpayer's arguments concerning double taxation and insufficient notice do not provide a legal basis for abating the assessment issued against the Taxpayer.

IT IS THEREFORE ORDERED that the Department abate $3,940.52 of the tax principal and $1,929.10 of the interest assessed against the Taxpayer in accordance with the Department's

oral stipulation at the administrative hearing. The Taxpayer remains liable for the balance of the tax principal assessed, plus interest accrued from the original due date of the tax until the date payment is made.

DATED April 19, 2007.